Supreme Court, U.S.
FILED

No. _____

931888 MAY 23 1994

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In The

Supreme Court of the United States

October Term, 1993

ELOISE ANDERSON, in her official capacity as Director of the California Department of Social Services and RUSSELL GOULD in his capacity as Director of the California Department of Finance,

Petitioners,

v.

VERNA EDWARDS, Guardian ad Litem for Verna Edwards; et al.,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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87 pp

QUESTION PRESENTED

May a state, consistent with federal law under the Aid to Families with Dependent Children (AFDC) program, adopt a rule that requires the needy caretaker relative and all needy children, siblings and non-siblings, when such persons live in the same household to be included in the same AFDC assistance unit?

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PETITION FOR WRIT OF CERTIORARI

Petitioners, Eloise Anderson, successor in interest to John D. Healy, as Director of the California Department of Social Services, and Russell Gould, successor in interest to Thomas Hayes, Controller of the State of California, (hereinafter "petitioners") hereby respectfully request this Court to issue a Writ of Certiorari to review the decision of the United States Court of Appeals for the Ninth Circuit entered in this case on December 1, 1993.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit in *Edwards v. Healy*, 12 F.3d 154 (9th Cir. 1993), is reproduced in the Appendix (hereinafter "App.") at 1. The opinion of the United States District Court for the Eastern District of California, is reproduced in the Appendix at 15.

JURISDICTION

On December 1, 1993, the United States Court of Appeals for the Ninth Circuit issued its opinion upholding the District Court's judgment for respondents. App. 1. Petitioners timely filed a Petition for Rehearing with Suggestion for Rehearing En Banc, and on February 22, 1994, the Court of Appeals denied the petition. App. 28. This Court has jurisdiction to review, by way of writ of certiorari, the judgment or decree of the federal Court of Appeals. 28 U.S.C. § 1254(1).

RELEVANT STATUTORY AND REGULATORY PROVISIONS

Relevant statutory and regulatory provisions are reproduced in the Appendix at 30 through 58.

STATEMENT OF THE CASE

The California regulation and policy challenged in this case, Manual of Policies & Procedures § 44-205.31, and its successor, § 82-824.1, provide that where AFDC assistance is sought for a needy dependent child who is not the child or offspring of the caretaker relative (hereinafter a "non-sibling"), and where there are other dependent children living in the household for which the caretaker receives assistance, all needy individuals, i.e., siblings, non-siblings, and the needy caretaker relative, must be in one assistance unit.[1] App. 51-52.

California's non-sibling filing unit rule was challenged by way of a class action complaint for declaratory and injunctive relief, alleging that the rule is invalid and contrary to various provisions of the federal laws and regulations governing the AFDC program. Upon cross-motions for summary judgment, the United States District Court for the Eastern District of California granted respondents' motion and invalidated the California regulation. In granting summary judgment, the District Court held that the case of *Beaton v. Thompson*, 913 F.2d 701 (9th Cir. 1990), which had struck down a similar Washington State AFDC regulation, constituted stare decisis and required the trial court to invalidate and enjoin the California regulation. App. 24.

California filed an appeal from the judgment with the Ninth Circuit Court of Appeals. On appeal petitioners asserted that *Beaton* had been wrongly decided and urged

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[1] This regulation and policy will hereinafter be referred to as the "non-sibling filing unit rule."

the Court of Appeals to overrule *Beaton* and reverse the decision of the district court.[2]

On December 1, 1993, the Court of Appeals rendered its decision, invoked the doctrine stare decisis, and held that whether or not it agreed with the substance of petitioners' arguments regarding the propriety of *Beaton* and its legal reasoning, sitting as a panel it was without authority to overrule *Beaton*. App. 4.

California timely filed a Petition for Rehearing and Suggestion for Rehearing En Banc. On February 22, 1994, the court denied the petition. App. 28.

REASONS FOR GRANTING THE PETITION

I.

REVIEW IS NECESSARY TO SETTLE A CONFLICT BETWEEN DECISIONS OF THE NINTH CIRCUIT COURT OF APPEALS AND THE MASSACHUSETTS STATE SUPREME COURT REGARDING WHETHER FEDERAL LAW PROHIBITS NON-SIBLING FILING UNIT RULES, PARTICULARLY BECAUSE THE SAME ISSUE IS CURRENTLY PENDING IN OTHER CIRCUIT COURTS OF APPEALS AND STATE COURTS OF LAST RESORT

The Court should grant California's Petition for a Writ of Certiorari in order to resolve the conflict between the Ninth Circuit Court of Appeals decisions invalidating Washington and California's non-sibling filing unit rules

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[2] Petitioners' initial suggestion for hearing en banc was never ruled on by the appellate court.

and the Massachusetts Supreme Court decision, *MacInnes v. Commissioner of Pub. Welfare*, 412 Mass. 790, 593 N.E.2d 222 (1992), which sustained that state's non-sibling filing unit rule. This Court's intervention is necessary in order to assure nationwide uniformity in the application of the federal regulations governing the administration of the AFDC program by the states.

In *MacInnes* the Supreme Court of Massachusetts sustained that state's non-sibling filing unit rule and in doing so expressly criticized *Beaton* and its rationale. Addressing *Beaton*'s contention that a needy caretaker relative, such as an aunt, uncle, or grandparent has no legal obligation to support or to share income with his or her needy dependent relative, the Massachusetts Supreme Court held that:

> "[T]he obligation of the caretaker to provide support comes from the Federal law requirement that the caretaker use all of the grant for the benefit of everyone in the assistance unit. Since we agree with the [trial] judge that a legal obligation to support exists in these circumstances, we disagree with the *Beaton* court that the effect of such a regulation is to presume income from a 'non-legally' responsible person." *MacInnes v. Commissioner of Pub. Welfare*, 593 N.E.2d at 226.

MacInnes is, therefore, in accord with United States Department of Health & Human Services' policy (see Argument V, *infra*) which provides that the non-sibling filing unit rule does not violate federal law.

As a result of the Ninth Circuit decision in this case and in *Beaton*, California unlike its sister state, Massachusetts, is prohibited from enforcing its non-sibling filing unit rule. Moreover, the Ninth Circuit Court of Appeals' decision in *Beaton* constitutes controlling precedent for all other states in the Ninth Circuit, rendering those states' non-sibling filing unit rules subject to invalidation and injunction. Such disparity in the administration of the AFDC program by the various states must be settled by this Court.

The question of the right of the states to adopt a non-sibling filing unit rule is currently being litigated in several federal courts of appeal and state courts of last resort. The question of the rule's validity has been argued and is under submission to the Supreme Court of North Carolina in the case of *Morrell v. Flaherty*, No. 203PA93, lower court decision reported at 428 S.E.2d 492 (N.C. Ct. App. 1993). New York's non-sibling filing unit rule is at issue before the United States Court of Appeals for the Second Circuit in the case of *Bray v. Kaladjian*, No. 93-7495, lower court decision reported at 1992 U.S. Dist. LEXIS 7022 (N.D. N.Y. May 6, 1992), and Minnesota's rule is before the Eighth Circuit Court of Appeals in the matter of *Wilkes v. Steffen*, No. 93-3596, lower court decision reported at 831 F.Supp. 723 (D. Minn. 1993).[3]

In order to foster uniformity among the states in the administration of the AFDC program, this Court should grant the petition and resolve the conflict.

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[3] In each of these cases, the lower court decision followed *Beaton*.

II.

THE NON-SIBLING FILING UNIT RULE PROMOTES EQUITY IN THE AFDC PROGRAM; ITS VALIDITY IS AN IMPORTANT QUESTION OF FEDERAL LAW WHICH THIS COURT SHOULD SETTLE

Federal law has long recognized the rights and responsibilities of the states in providing for the general welfare of their needy citizenry. Several times this Court has recognized the grant of congressional authority given to each state to provide welfare assistance in the manner it has determined to be most practicable under the conditions in the state. *Dandridge v. Williams*, 397 U.S. 471, 478 (1970); *Shea v. Vialpando*, 416 U.S. 251, 253 (1974). "There is no question that states have considerable latitude in allocating their AFDC resources. . . . " *King v. Smith*, 392 U.S. 309, 318-319 (1968). The decision in this case, and in *Beaton*, unlawfully restricts California and other Ninth Circuit states from exercising their right to prescribe the composition of the AFDC assistance unit and the allocation of AFDC resources which are to be provided to needy dependent children.

A basic tenet of the AFDC program requires equity in the state's disbursement of AFDC assistance. 45 Code of Federal Regulations section 233.20(a)(1)(i) provides that the state must determine the need and amount of assistance for all applicants and recipients on an objective and equitable basis. The following examples provide graphic illustration of the inherent inequity which is caused by the lack of a non-sibling filing unit rule on the disbursement of AFDC to California households composed of four needy individuals:

Case No. 1:

Needy caretaker,
plus 3 of her own children
(Assistance Unit of 4)

TOTAL AFDC GRANT:
$ 788/month

Case No. 2:

Needy caretaker,
plus 2 of her own children
(Assistance Unit of 3)
AFDC grant $ 663/month

plus one niece
(Assistance Unit of 1)
AFDC grant $ 326/month

TOTAL AFDC GRANT:
$ 989/month

Case No. 3:

Needy caretaker,
plus her own child
(Assistance Unit of 2)
AFDC grant $ 535/month

plus one niece
(Assistance Unit of 1)
AFDC grant $ 326/month

plus another niece
(Assistance Unit of 1)
AFDC grant $ 326/month

TOTAL AFDC GRANT:
$ 1187/month

Case No. 4:

Non-needy caretaker,
(ineligible for AFDC)

plus one niece
(Assistance Unit of 1)
AFDC grant $ 326/month

plus another niece
(Assistance Unit of 1)
AFDC grant $ 326/month

plus another niece
(Assistance Unit of 1)
AFDC grant $ 326/month

plus another niece
(Assistance Unit of 1)
AFDC grant $ 326/month

TOTAL AFDC GRANT:
$ 1304/month

Because the lower courts have invalidated California non-sibling filing unit rule, California's AFDC monthly assistance payments for four needy individuals residing in the same household may range from **$788** to **$1304** per

month. Under the rule, all needy individuals would be in one assistance unit and would be entitled to a uniform and equal amount. Thus, the non-sibling filing unit rule promotes fair and equitable disbursement of AFDC funds to households with similar needs. Federal AFDC law does not mandate that such inequity be foisted upon California and other Ninth Circuit states' dependent children, but this is precisely what the Ninth Circuit has done in this case and in *Beaton v. Thompson*.

Beaton, however, was wrongly decided and is not supported by the authorities upon which it relies. Moreover, the court's reliance on the cited authorities demonstrates that the court failed to grasp the intricacies of the "Byzantine" patchwork of federal statutory provisions governing the AFDC program. *Schweiker v. Gray Panthers*, 453 U.S. 34, 43 (1981); *Skidgel v. Maine Department of Human Resources*, 994 F.2d 930, 939 (1st Cir. 1993).

III.

THE NINTH CIRCUIT ERRONEOUSLY APPLIED THE RULES GOVERNING "AVAILABILITY OF INCOME" TO THE RULES GOVERNING COMPOSITION OF THE ASSISTANCE UNIT

The initial step in determining AFDC eligibility is for the state to identify the person(s) for whom assistance is to be granted and to determine the composition of the assistance or filing unit. App. 34. The term "aid to families with dependent children" means money payments with respect to a dependent child or dependent children, and includes payments to meet the needs of the relative with whom any dependent child is living. 42 U.S.C.

§ 606(b). A dependent child is defined as a needy child under age 18 (with certain exceptions not applicable here) who has been deprived of parental support by reason of death, continued absence, physical or mental incapacity of a parent, and who is living with a parent, grandparent, sibling, step-parent, step-sibling, uncle, aunt, first cousin, nephew or niece in a residence maintained by the relative as her home. 42 U.S.C. § 606(a).

The non-sibling filing unit rule is similar in function and purpose to the federal mandatory family filing unit rule, 42 U.S.C. § 602(a)(38). The mandatory family filing unit rule requires the states to include in one assistance unit the parents and all dependent, minor siblings living with a child who applies for, or receives, AFDC. *Bowen v. Gilliard*, 483 U.S. 587, 593-594 (1987); 45 C.F.R. § 206.10(a)(1)(vii); *see also* SSA Action Transmittal 86-1, attached hereto at App. 44. Like the federal mandatory family filing unit rule, California's non-sibling filing unit rule requires that non-siblings be in the same filing unit as their needy caretaker relative and all other dependent minor siblings living with a child who applies for or receives AFDC. MPP § 44-205.31 and its successor, § 82-824.1, App. 51 and 52. The mandatory family filing unit rule and the non-sibling filing unit rule both establish whose resources must be considered in determining the financial need of the assistance unit. *See Skidgel v. Maine Dept. of Human Resources*, 994 F.2d at 934 (1st. Cir. 1993).

Once the composition of the filing or assistance unit is determined, the state is next required to determine whether and to what extent such dependent individuals are needy. App. 34-35. In so doing the state is mandated

to "take into consideration any income and resources of any child or relative claiming aid to families with dependent children . . . . " 42 U.S.C. § 602(a)(7)(A).

The principle of "availability" governs the definition of income for the purposes of 42 U.S.C. § 602(a)(7)(A). *Gorrie v. Bowen*, 809 F.2d. 508 (8th Cir. 1987). "The [availability] principle prevents the states from 'relying on imputed or unrealizable sources of income artificially to depreciate a recipient's need.' [citations]." 809 F.2d at 515.

It is well established, however, that attribution of income from an individual who *must* be included in the filing unit *does not* violate the principle of availability, *even* where the person whose income is deemed available has *no legal obligation* to support others in the same assistance unit. *Gorrie*, 809 F.2d at 515-516; *Bowen v. Gilliard*, 483 U.S. 587, 593, n.5 (1987); *Bradley v. Austin*, 841 F.2d 1288, 1294-1295 (6th Cir. 1988); *Oliver v. Ledbetter*, 821 F.2d 1507, 1512-1513 (11th Cir. 1987). As explained in *Gorrie*, by enacting the federal mandatory filing unit rule, Congress initiated a change in policy and procedure, "to change the focus of the AFDC need determination away from resources available to individuals and toward the resources available to all of the individuals in an AFDC family." 809 F.2d at 515. In *Gorrie* the court sustained the Secretary of Health and Human Services' assertion that the congressional change in policy and procedure was "intended to create a legislative presumption of availability of income as to the individual and as to the family in recognition of the fact that family members who live together most likely share expenses." 809 F.2d at 516.

Beaton constitutes a positive detriment to coherence and consistency in the law because it poses a direct obstacle to California and other Ninth Circuit states from realizing important objectives embodied in the congressionally mandated policies and procedures. It does so on the basis that the non-sibling filing unit rule,

> "necessarily involves attributing income of the non-legally responsible adult because the plan reduces the grant to the child based on the fact that the child is living with, and thus sharing expenses with, the caretaker relative." *Beaton v. Thompson*, 913 F.2d at 704.

Beaton is expressly inconsistent with the widely recognized provision that attribution of income between individuals who *must* be included in the same assistance unit does not violate the principle of availability, even where a legal obligation of support is absent. *Bowen v. Gilliard*, 483 U.S. at 593, n.5, 596-597.

Beaton committed a fundamental error by applying rules governing the determination of financial need to rules which determine the composition of the assistance unit. As the First Circuit held in *Skidgel*, the courts have overwhelmingly rejected the argument that a child must be determined to be needy before that child is to be placed in the family filing unit. *Skidgel v. Maine Dept. of Human Services*, 994 F.2d at 938. *Beaton*'s error in this regard is twofold: (1) it invalidated the state's rule governing composition of the filing unit by utilizing regulations which govern the determination of financial need, a practice which *Skidgel* indicates has been overwhelmingly rejected by the courts; and, (2) it failed to take into consideration the congressionally mandated change of

focus of the AFDC needs determination, as recognized in *Gorrie*, away from resources available to individuals and toward the resources available to all of the individuals in an AFDC family.

Beaton wrongfully bars Ninth Circuit states from including in the same assistance unit needy individuals who have "no legal obligation of support" such as aunts, uncles, cousins and grandparents with their needy "non-sibling" relatives. *Beaton*'s ruling is directly contrary to federal AFDC law and to past rulings of this Court. 42 U.S.C. § 606(b); 45 C.F.R. § 233.10(b)(2)(ii)(b); *Bowen v. Gilliard*, 483 U.S. at 593, n.5, 596-597.

Beaton's reliance on *McCoog v. Hegstrom*, 690 F.2d 1280 (9th Cir. 1982), and *Gurley v. Wohlgemuth*, 421 F.Supp. 1337 (E.D. Pa. 1976) as authority for striking down Washington's non-sibling filing unit rule is misplaced, as those cases are inapposite.

In *McCoog*, the Ninth Circuit invalidated an Oregon AFDC regulation which automatically reduced the shelter component of an AFDC assistance grant when a dependent child lived with a caretaker relative who was not needy and was not in the assistance unit. 690 F.2d at 1285. Unlike the regulation invalidated by *McCoog*, the non-sibling filing unit rule does not effect a reduction of benefits where the caretaker relative is not needy and not included in the assistance unit. *See* Case Example No. 4, above. The non-sibling filing unit rule does not presume income to be available from any individual, including a caretaker relative, who is outside of the assistance unit when determining the financial need of the assistance unit.

In *Gurley*, a Pennsylvania AFDC regulation allowed the combining of two individual families, or assistance units, each headed by two separate caretaker relatives, into one assistance unit. The district court struck down the regulation on the basis that it constituted an improper presumption of income between the caretaker relatives. 421 F.Supp. at 1345. The non-sibling filing unit rule is not used to combine two separate caretaker relatives and their families into one assistance unit. The California regulation is expressly to the contrary; it applies only when there is but one caretaker relative in the household. App. 51 and 52.

Since the non-sibling filing unit rule does not presume income to be available from individuals who are themselves not members of the assistance unit, and does not consolidate different caretaker relatives into one assistance unit, neither *McCoog* nor *Gurley* supports a decision to invalidate the rule. This Court should grant review to reaffirm the states' discretion to adopt such a rule to govern their AFDC programs.

IV.

THE REGULATORY HISTORY OF THE PERTINENT FEDERAL REGULATIONS DEMONSTRATES THAT THESE REGULATIONS WERE NOT MEANT TO BE APPLIED TO THE NON-SIBLING FILING UNIT RULE

A review of the regulatory history for the three federal AFDC provisions held in *Beaton* to be violated by the non-sibling filing unit rule, 45 C.F.R. §§ 233.90(a)(1), 233.90(a)(2)(viii), and 233.20(a)(3)(ii)(D), indicates that

these regulations were not meant to be applied to factual situations addressed by the rule.

Section 233.90(a)(1), App. 32, provides in pertinent part that the presence in the home of a substitute parent or of a "man-in-the-house" is not an acceptable basis for a finding of ineligibility or for assuming the availability of income by the state on the basis that a child was not deprived of parental support or care.

Section 233.90(a)(1) was codified to implement this Court's decision in *King v. Smith*, 392 U.S. 309 (1968). *Van Lare v. Hurley*, 421 U.S. 338, 345 (1975). In the context of *King*, it is apparent that the regulation was intended to remedy a specific loophole by defining what Congress meant by the term "parent." As codified, the regulation was not intended to prohibit a specified caretaker relative, who is not a parent, from being included in the same assistance unit as the non-sibling, or to preclude the consideration of income which is available to members of such an assistance unit in determining their financial need.

Section 233.20(a)(3)(ii)(D) provides in part that income and resources are considered available when they are actually available. This section implements 42 U.S.C. § 602(a)(7) which states "that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children. . . ." *Lewis v. Martin*, 397 U.S. 552, 557 (1970). The regulation is directed at prohibiting states from assuming contributions from persons *not* seeking AFDC benefits. 397 U.S. at 556-557. Surely it was not the intent of the regulation to preclude

consideration of the income and resources available to members of the assistance unit solely on the basis that the assistance unit includes the caretaker relative and *all* needy children in the household.

Lastly, section 233.20(a)(2)(viii) in part provides that AFDC benefits will not be prorated or otherwise reduced solely because of the presence in the household of a non-legally responsible individual. The section was codified to implement this Court's decision in *Van Lare v. Hurley*, 421 U.S. 338 (1975). In *Van Lare* this Court, restating the principles laid down in *King* and *Lewis*, invalidated New York's "lodger" regulation which reduced benefits to the assistance unit because it assumed contributions from a non-legally responsible person. The regulation, however, was not intended to apply to the situation of a *needy* caretaker relative who *is* a member of the assistance unit with their dependent "non-sibling" relative. That is, the intent of the regulation, to restrict presumption of income from persons who are *not* part of the assistance unit and have no legal responsibility to anyone in the assistance unit, is not applicable to the families affected by the non-sibling filing unit rule.

There is no intent on the part of the United States Department of Health & Human Services, this Court, or the Congress to make the above referenced federal regulations apply to situations addressed by the non-sibling filing unit rule. The Ninth Circuit's decisions in this matter, and in *Beaton* are in error. Accordingly, this Court should grant California's petition.

V.

FEDERAL AFDC POLICY SUPPORTS CALIFORNIA'S ENACTMENT AND ENFORCEMENT OF THE NON-SIBLING FILING UNIT RULE

The federal agency responsible for administering the AFDC program, the Department of Health and Human Services ("DHHS"), firmly supports petitioners' contention that it is within the states' discretion whether or not to include needy non-siblings in the already existing assistance unit, or to place the non-sibling into a separate assistance unit. In 1986 the DHHS issued Action Transmittal No. SSA-AT-86-1. App. 44.

> "Outside of this policy [mandatory family filing rule, 42 U.S.C. § 602(a)(38)] *it is up to the State* to establish policy on the number of assistance units in the household, e.g., when an individual not related to a member of the assistance unit as a parent, brother or sister lives in the household and files for assistance." App. 50, emphasis added.

On March 16, 1994, the DHHS issued Action Transmittal ACF-AT-94-6, App. 33 (hereinafter "AT-94-6"), specifically setting forth the most current federal policy governing the authority of state agencies to consolidate assistance units in circumstances involving non-siblings. With respect to the non-sibling filing unit rule at issue in these proceedings, the newly issued federal policy statement instructs that the states have authority to exercise their discretion to either consolidate non-siblings into the existing assistance unit or allow the non-siblings to be in a separate assistance unit:

> "Apart from complying with these two Federal requirements [the family filing unit rule, and the rule which requires consolidation when a person is required to be in two or more assistance units], *States are authorized to set the State-wide policy*, to be applied to all cases, whether and under what conditions two or more assistance units in the same household are to be consolidated or retained as separate units. [citations]" App. 35, emphasis added.

AT-94-6 provides that neither option is inconsistent with or violates governing AFDC statutory and regulatory provisions. App. 34, 40-42.

AT-94-6 begins with the instruction that before AFDC assistance is awarded, "[s]tates must first determine the composition of the assistance unit and then establish eligibility which includes determining the income and resources available to members of the unit." App. 34-35.

AT-94-6 specifically analyzes the same federal regulations that *Beaton* held were violated by Washington's nonsibling filing unit rule: 45 C.F.R. §§ 233.20(a)(2)(viii), 233.20(a)(3)(ii)(D), and 233.90(a)(1).

In addressing § 233.20(a)(2)(viii), AT-94-6 states that

> "the regulation was intended to prohibit the State from assuming (without actually determining) that there will be available to the dependent child(ren) in an assistance unit the income or resources of a person who lives in the *same household*, but is *not* a member of the *assistance unit* claiming benefits . . . . In contrast, the statute and regulations expressly require that all income and resources of all members of the

> assistance unit will be counted." App. 37, emphasis in original.

Accordingly, there is no violation of § 233.20(a)(2)(viii) by considering the income or resources of all assistance unit members – siblings, non-siblings, and the caretaker relative – residing in the same household. That is, consistent with the regulation, the non-sibling filing unit rule does not prorate or reduce benefits solely because of the presence of a non-legally responsible person residing in the household.

AT-94-6 also states that § 233.20(a)(3)(ii)(D)

> "is intended to preclude the State from counting as available to the assistance unit income or resources that are not actually or legally available to one of the members of the unit. Once income or resources that are available to each member of the assistance unit are counted, the income and resources of all members of the assistance unit are considered together to determine the need, eligibility and amount of payment of a unit . . . . " App. 38.

Hence, in the application of the non-sibling filing unit rule, section 233.20(a)(3)(ii)(D) is not violated because only the income or resources of individuals within the unit are considered in determining both eligibility and the amount of assistance to be paid to the unit. Petitioners' rule and DHHS's policy are in accord with the express language of this regulation.

Lastly, AT-94-6 examines section 233.90(a)(1). AT-94-6 notes that

> "[B]y its terms, this regulation prohibits the State from finding a claimant ineligible because

> it concludes that the presence of such a person ['substitute parent,' 'man-in-the-house,' or 'any individual other than one described in this paragraph'] should mean that the claimant is not deprived of parental support." App. 39.

With regard to the application of the non-sibling filing unit rule, the state is not determining an applicant for assistance to be ineligible for failure to be deprived of parental support. Rather, the fact that the non-sibling is applying for assistance through his or her residence with the non-parental caretaker relative indicates that the applicant is deprived of parental support. Accordingly, DHHS recognizes that the non-sibling filing unit rule does not violate § 233.90(a)(1).

Finally, AT-94-6 provides two examples that illustrate appropriate operation of the above referenced federal regulations. App. 40-42. Example A illustrates application of the non-sibling filing unit rule which, according to the federal agency's policy instruction, is appropriate and consistent with federal law. App. 40-41.

Thus, the federal AFDC agency unambiguously supports California's non-sibling filing unit rule. App. 59. DHHS' policy instruction AT-94-6 is entitled to substantial deference. As this Court has recognized, "considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer." *Chevron, USA, Inc. v. NRDC*, 469 U.S. 837, 844 (1984). This Court has also cautioned that when interpreting a statute " 'the construction of a statute by those charged with its execution should be followed unless there are compelling indications that it is wrong. . . . ' " *New York State Dept. of Social Services v.*

Dublino, 413 U.S. 405, 421 (1973), quoting, *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 369, 381 (1969). The federal agency's policy instruction, which validates the states' non-sibling filing unit rules, constitutes another compelling reason for granting California's petition for writ of certiorari.

CONCLUSION

Ample justification exists to grant certiorari in this case. The non-sibling filing unit rule promotes equity in the provision of AFDC benefits to similarly situated families. The decisions of the Ninth Circuit in this case and in *Beaton v. Thompson* are without substantive support, erroneous, inequitable, and contrary to the intent of the very regulations held to be violated. The lower court's decision frustrates the congressional grant of authority to the states to provide public assistance in the manner most practicable in each state. The decision flies in the face of a substantial body of federal case law, including decisions of this Court. The Department of Health and Human Services has plainly and unconditionally placed its imprimatur on the very policy struck down by the Ninth Circuit. This Court should therefore grant this petition to settle this important question of federal law governing the provision of AFDC assistance by the States.

DATED: May 20, 1994

Respectfully submitted,

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FOR PUBLICATION

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

VERNA EDWARDS, Guardian Ad Litem for Verna Edwards, Pamela Edwards and Ericka Edwards; BARBARA MOORE Guardian Ad Litem for Rebiana Robi; Derral Robi, Delisha Jaa and Rayleisha Taylor et al., *Plaintiffs-Appellees,* v JOHN HEALY, in his official capacity as acting director of the California Department of Social Services; THOMAS HAYES, in his official capacity as Director, California Department of Finance *Defendants-Appellants*	No. 92-16051 D.C. NO. CV-91-01473-DFL OPINION

Appeal from the United District Court
for the Eastern District of California
David F. Levi, District Judge, Presiding

Submitted November 4, 1993*
San Francisco, California

Filed December 1, 1993

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* The panel unanimously finds this case suitable for decision without oral argument. Fed.R.App. P. 34(a) and Ninth Circuit Rule 34-4.

Before: William C. Canby, Jr., and John T. Noonan, Circuit Judges and William H. Orrick,** District Judge.

Opinion by Judge Canby

SUMMARY

Government Law/Welfare

The court of appeals affirmed a district court judgment. The court held that California Department of Social Services regulations that combine applicants or recipients for Aid to Families with Dependent Children(AFDC) who live in households comprised of two or more non-sibling dependent children and a single caretaker relative, or a relative married couple, into one "assistant unit" or "family budget unit" are invalid.

Appellees Verna Edwards and other applicants or recipients for AFDC who live in households comprised of two or more non-sibling dependent children and a single caretaker relative, or a relative married couple, challenged California Department of Social Services regulations that combine AFDC recipients in their position into one "assistant unit" or "family budget unit." The plaintiffs alleged that the regulations violated federal law and regulations by improperly presuming that the resources of a caretaker would be made available to all of the

---

** The Honorable William H. Orrick, Senior United States District Judge for the Northern District of California, sitting by designation.

children within his or her care even though the caretaker was not legally responsible for their support. The district court entered a judgment invalidating the regulations. The defendant appealed.

[1] In *Beaton v. Thompson*, 913 F.2d 701 (9th Cir. 1990), the Ninth Circuit held invalid a virtually identical regulation of the State of Washington as inconsistent with federal law and regulation. [2] *Beaton* controls this case.

COUNSEL

Jodie Berger, Legal Aid Society of Alameda County, Oakland, California, attorney for the plaintiffs-appellees.

Mateo Muñoz, Deputy Attorney General, Sacramento, California, attorney for the defendants-appellants.

OPINION

CANBY, Circuit Judge:

The plaintiffs in this case are a class of applicants or recipients for Aid to Families with Dependent Children ("AFDC") who live in households comprised of two or more non-sibling dependent children and a single caretaker relative, or a relative married couple. They challenge regulations of the California Department of Social Services, MPP § 44-205.31 and its successor, § 82-824.1. Those regulations combine into one "assistant unit" or "family budget unit"

AFDC recipients in the position of plaintiffs. Plaintiffs contend that the challenged regulations violate federal law and regulations by improperly presuming that the resources of a caretaker will be made available to all of the children within his or her care even though the caretaker is not legally responsible for their support.

[1] In *Beaton v. Thompson*, 913 F.2d 701 (9th Cir. 1990), this court held invalid a virtually identical regulation of the State of Washington as inconsistent with federal law and regulation. The defendants here, the Director of the California Department of Social Services and the Director of the California Department of finance, argue that *Beaton* was erroneously decided and should be overruled. We do not necessarily agree with that contention, but at this point it would make no different if we did. This panel has no authority to overrule or disregard *Beaton*; that could only be accomplished by an en banc court. We therefore adhere to the ruling of *Beaton*.

Defendants argue that *Beaton* is distinguishable because certain state "interests" were not made clear to the court in *Beaton*, and the decision of the United States Supreme Court in *Bowen v. Gilliard*, 483 U.S. 587 (1987), was not adequately taken into account. These purported distinctions are far too insubstantial to overcome the *stare decisis* effect of *Beaton*. Defendants present to us the same position urged by the State of Washington in *Beaton*, with merely a change in emphasis.

[2] We conclude, therefore, that *Beaton* controls this case. The judgment of the district court invalidating the regulations is

AFFIRMED.

App. 5

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF CALIFORNIA

OFFICE OF THE CLERK
650 CAPITOL MALL
SACRAMENTO, CA 95814

VERNA EDWARDS
ET AL.

v.

JOHN HEALY, ET AL.

JUDGMENT IN A CIVIL CASE

Civ.S. 91-1473 DFL

(Filed May 8, 1992)

IT IS ORDERED AND ADJUDGED THAT THE JUDGMENT IS HEREBY ENTERED ACCORDING TO THE COURT'S ORDER FILED 5/8/92 GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT.

ENTERED: May 8, 1992

Jack L. Wagner,
Clerk of the Court
By: /s/ J. Young Jr.
J. YOUNG JR.,
DEPUTY CLERK

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

VERNA EDWARDS for herself and as Guardian Ad Litem for VERNAIS EDWARDS, PAMELA EDWARDS and ERICKA EDWARDS; BARBARA MOORE, for herself and as Guardian Ad Litem for REBIANA ROBI, DERRAL ROBI, DELISHA JAA, RAYLEISHA TAYLOR; and VANESSA HAMILTON for herself and as Guardian Ad Litem for JONNY WATSON, CLEO THOMAS, RICKY MCDONALD, JIMMY PASHELL, and STANLEY HAMILTON, on behalf of themselves and all others similarly situated, Plaintiffs, vs. JOHN D. HEALY, in his official capacity as Acting Director of the California Department of Social Services; and THOMAS HAYES, in his official capacity as Director, California Department of Finance, Defendants.	Case No. CIV-S-91 1473 DFL JOINT PROPOSED ORDER FOR DECELARATORY [sic] AND INJUNCTIVE RELIEF CLASS ACTION (Filed May 8, 1992)

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Attorneys for Plaintiffs

ORDER

Plaintiffs' and defendants' Cross-motions for summary judgment were heard in this Court at 9:00 a.m. on April 17, 1992, Honorable David F. Levi presiding. All parties were present and represented by counsel.

This Court has considered the memoranda of points and authorities, the declarations and all other pleadings on file in this case, and has considered the arguments of counsel. The court finds that, as in *Beaton v. Thompson*, defendants have violated federal law and regulations by requiring that AFDC eligible siblings and non-siblings living with a single caretaker relative be in a single assistance unit. Therefore, the court hereby grants plaintiffs' motion for summary judgment.

Accordingly, IT IS HEREBY ORDERED:

1. Plaintiffs' motion for summary judgment is granted.

2. This Court finds and declares that MPP §§ 44-205.31 and 82-824.13 violate federal law and regulations.

3. Pursuant to the Court's order granting summary judgment, defendants John D. Healy, the California Department of Social Services, Thomas Hayes and the California Department of Finance, together with their agents, employees, and successors in interest, are permanently enjoined from applying and shall immediately cease applying MPP §§ 44-205.21 and 82-824.13 and any policy which requires that AFDC eligible siblings and non-siblings living with a single caretaker relative be in a single assistance unit. For purposes of this document, AFDC eligible siblings and non-siblings include children who would be eligible for AFDC but/for receipt of benefits under Title XVI (SSI).

4. Defendants shall pay separate grants to AFDC eligible children who are not required to be in the same assistance unit pursuant to 42 U.S.C. § 602(a)(38) and shall continue to allow a needy non-parent caretaker relative with no AFDC eligible children of his/her own to choose to be included in an assistance unit with a needy related child.

IT IS FURTHER ORDERED THAT IN ORDER TO ASSURE COMPLIANCE WITH THE FOREGOING DEFENDANTS SHALL:

a. Within ten working days of being served with this order, defendants shall send an All-County Letter (ACL) to all county welfare departments instructing counties to immediately cease recoupment of overpayments caused by application of MPP § 44-205.31 or

MPP § 82-824.13 and to immediately begin to pay separate AFDC grants in accordance with this order for all new AFDC applications being approved for aid.

b. Within three weeks of being served with this Order, Defendants shall transmit to plaintiffs' counsel a draft All County Letter (ACL) setting forth detailed instructions to the Counties regarding how they are to identify affected cases and calculate and issue benefits retroactive to the date of this order and to correct ongoing grants. The ACL shall instruct counties to begin implementation as soon as possible, but not more than 60 days from the date of the ACL. The ACL shall also instruct counties to identify and correct all affected cases within ninety (90) days of implementation of the process. The ACL shall also inform counties that once a recipient has completed the paper work necessary to correct the underpayment, the county shall issue all corrective payments and make adjustments to the ongoing grant within thirty days (30). Plaintiffs' counsel shall be allowed three working days to review the draft ACL and instructions and provide comments to defendants. In the event that plaintiffs object to the ACL, instructions or other parts thereof, plaintiffs will notify defendants and the parties agree to confer within six working days of plaintiffs' receipt of the draft ACL to attempt to settle their disagreement. Defendants will consider plaintiffs comments and will finalize and issue the ACL within 10 working days of receiving such comments. It is understood that the timeline between sending plaintiffs the ACL and issuing it is extended if the joint legislative budget committee fails to act before thirty days. It is also agreed that DSS

and the Department of Finance will try to expedite the Legislative budget committee process.

c. Defendants shall send all current AFDC recipients a request for information regarding household composition to assist in identification of affected cases. Such request shall contain simple language substantially including the following concepts: that they may be able to get more cash aid if their household includes children other than their own sons and daughters. The language used to transmit the concept that they may be owed more money shall be at the top of the request; unless the parties agree otherwise. The notice shall be printed in both English and Spanish. It shall also include some printed indication in the other four standard languages that the notice is important. The State may waive the requirement of written notice to all AFDC recipients if a particular county can identify all affected cases and issue all corrective payments without sending such notice. Defendants agree to immediately inform plaintiffs of the grounds for granting any waivers of the requirement.

d. Defendants shall instruct the appropriate counties to compute AFDC benefits and issue corrective payments to plaintiffs Edwards, Moore, and Hamilton within thirty days of service of the order on Defendant DSS.

e. Within six months of receipt of this order Defendants shall submit to the Office of Administrative Law an emergency repeal of MPP Section Sections 44-205.31 and 82-824.13.

f. The State shall require each county to complete certification with regard to implementation and

report the current status of statewide implementation to this Court within 180 days from the implementation date specified in the ACL. This report shall include the numbers of affected cases split into separate assistance units by county.

4. Either party may petition the Court for clarification or assistance in the implementation of this order or to settle any dispute regarding notices, forms or procedures used in implementing this order. The parties hereby waive normal notice and agree to submit the matter to the court upon five working days written notice, or as soon thereafter as the Court can hear the matter. In such case the timeframes set out in this order are temporarily tolled for the period of time necessary to resolve the issue.

5. This Court shall retain jurisdiction to determine the Plaintiffs' entitlement to attorneys' fees. Notwithstanding Local Rule 293, Plaintiffs and Defendants agree that any motion for attorney fees shall be filed no later than sixty days after either the entry of final judgment or any appeal has become finalized, whichever is later.

READ AND AGREED TO:

Dated: April 29, 1992

LEGAL AID FOUNDATION OF LOS ANGELES WESTERN CENTER ON LAW AND POVERTY NATIONAL CENTER FOR YOUTH LAW CONTRA COSTA LEGAL SERVICES

By: /s/ Yolanda Vera
Yolanda Vera
Attorneys for Plaintiffs

Dated: 5/1/92

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State of California
DENNIS ECKHART,
Supervising Deputy
Attorney General

By: /s/ Mateo Munoz
Mateo Munoz
Deputy Attorney General
Attorneys for Defendant
John Healy, as Interim
Director of the
Department of Social
Services and John Hayes,
Department of Finance

SO ORDERED.

Dated: 7 May 1992

/s/ David F. Levi
David F. Levi
United States District Court
Judge

DECLARATION OF SERVICE BY MAIL

CASE NAME: EDWARDS v. HEALY, et al.

COURT: UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CASE NO.: CIV-S-91 1473 DFL PAN

I, the undersigned, declare that I am over the age of 18 and not a party to the within action; my business

address is Post Office Box 944255, Sacramento, California, 94244-2550.

On May 1, 1992, I served a true copy of the attached

DEFENDANTS OBJECTION TO ADDITIONAL TERM SOUGHT TO BE ADDED TO PROPOSED ORDER ON PERMANENT INJUNCTION

DECLARATION OF VINCENT J. TOOLAN

JOINT PROPOSED ORDER FOR DECELARATORY [sic] AND INJUNCTIVE RELIEF

on each of the following parties, by placing the same in an envelope (or envelopes) addressed (respectively) as follows:

Yolanda Vera, Esq.
Brian Patrick Lawlor, Esq.

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Each said envelope was then sealed and deposited in United States mail with the postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on May 1, 1992, at Sacramento, California.

/s/
SANDRA ZOTALIS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

VERNA EDWARDS, for herself and as Guardian Ad Litem for VERNAIS EDWARDS, PAMELA EDWARDS and ERICKA EDWARDS; BARBARA MOORE, for herself and as Guardian Ad litem for REBIANA ROBI, DERRAL ROBI, DELISHA JAA, and RAYLEISHA TAYLOR; and VANESSA HAMILTON, for herself and as Guardian Ad Litem for JONNY WATSON, CLEO THOMAS, RICKY McDONALD, JIMMY PASHELL and STANLEY HAMILTON, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

JOHN D. HEALY, in his official capacity as Interim Director of the California Department of Social Services; and THOMAS HAYES, in his official capacity as Director, California Department of Finance,

Defendants.
_____/

Civ. S-91-1473
DFL

ORDER

(Filed
Apr. 24, 1992)

Plaintiffs in this case are children who qualify for California's Aid to Families with Dependent Children ("AFDC") and reside with a caretaker who provides care to two or more non-sibling children. The caretakers of

these children also sue. The plaintiffs challenge a California regulation redefining an "assistance unit" to combine all non-siblings having the same caretaker into a single assistance unit. Plaintiffs move to certify as a class, the children and their parents or relative caretakers whose AFDC grants have been reduced by this regulation. Plaintiffs then move for summary judgment claiming that the California regulation violates federal law. The defendant Department of Social Services (the "Department") opposes plaintiff's motion for class certification and moves for summary judgment claiming that the "assistance unit" regulation is valid.

FACTUAL AND PROCEDURAL BACKGROUND

The AFDC program is a federal program in which states may elect to participate. Once a State elects to participate, it must conform with the Social Security Act and the implementing regulations by preparing a State plan for the administration of this cooperative program. *McCoog v. Hegstrom*, 690 F.2d 1280, 1284 (9th Cir. 1982). California has elected to participate in the AFDC program and has therefore, adopted regulations governing the administration of the AFDC program.

The federal government provides a portion of the AFDC grant to needy children,[1] age 18 and under, who reside in the home of a parent or specified relative and are deprived of parental support or care by reason of the

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[1] Dependant children may be eligible for AFDC if they are "needy" as determined by 42 U.S.C. § 602 et seq. and related regulations. In this opinion, the term "AFDC eligible" will be used to refer to a child who meets the criterion of need set forth by federal law.

death, continued absence, incapacity or unemployment of a parent. 45 C.F.R. § 233.10(a)(2)(ii)(*a*). The parent or caretaker relative is also eligible for financial assistance. 45 C.F.R. § 233.10(a)(2)(ii)(*b*).

Plaintiffs assert that California regulations MPP[2] Sections 44-205.31[3] and 82-824.1 violate federal law and its implementing regulations. *See* 42 U.S.C. § 602(a)(7)(A).[4] The state regulations at issue group all children who

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[2] MPP refers to the Eligibility and Assistance Standards Manual of Policies and Procedures. Divisions 40 - 50 and 80 - 90 of the MPP contain the state regulations governing California's AFDC program.

[3] Until October 1, 1991, MPP Section 44-205.31 provided that "[a]ll of the eligible child(ren) will be in one FBU [family budget unit or assistance unit] if there is only one caretaker relative in the home." This section was repealed and replaced, effective October 1, 1991, by MPP Section 82-824.1 which provides:

.1 Combining AUs

Two or more AUs in the same home shall be combined into one AU when:

.11 Marriage

A caretaker relative is married to another caretaker relative in another AU, or

.12 Child in Common

Two caretaker relatives in the home have separate children and also have a child in common, or

.13 One Caretaker

There is only one caretaker relative.

[4] 42 U.S.C. § 602(a)(7)(A) requires that a state plan for aid and services to needy families with children:

> . . . take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any other individual (living in the same home as such child and relative) whose needs the State determines should be

reside with an adult caretaker into a single "assistance unit" or "family budget unit," regardless of the child's

---

considered in determining the need of the child or relative claiming such aid.

The implementing regulations include the following provisions:

> A State plan . . . must . . . Provide that the money amount of any need item included in the standard will not be prorated or otherwise reduced solely because of the presence in the household of a non-legally responsible individual; and the agency will not assume any contribution from such individual for the support of the assistance unit . . . 45 C.F.R. § 233.20(a)(2)(viii).
>
> . . . income and resources are considered available both when actually available and when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance. 45 C.F.R. § 233.20(a)(3)(ii)(D).
>
> A State plan under title IV-A of the Social Security Act shall provide that: (1) The determination whether a child has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or (if the State plan includes such cases) the unemployment of his or her parent who is the principal earner will be made only in relation to the child's natural or adoptive parent, or in relation to the child's step-parent who is married, under State law, to the child's natural or adoptive parent and is legally obligated to support the child under State law of general applicability. . . . Under this requirement, the inclusion in the family, or the presence in the home, of a "substitute parent" or "man-in-the-house" or any individual other than one described in this paragraph is not an acceptable basis for a finding of ineligibility or for assuming the availability of income by the State. 45 C.F.R. § 233.90(a)(1).

relationship to the caretaker or other non-sibling children. The regulation results in a loss of income to all AFDC recipients living in the same household with a relative caretaker who provides for AFDC eligible children who are not all siblings. Plaintiffs claim that this regulation violates federal law by presuming that the caretaker who assists AFDC eligible children of relatives will make his or her income and assets available to all of the children living with the caretaker, although the caretaker is not legally responsible for the relative's children. *See* federal regulations at n. 4, *supra.*

There are three named plaintiff households: (1) Verna Edwards, who cares for her granddaughter and two grandnieces, (2) Barbara Moore, who cares for her own daughter, son, and two orphaned grandchildren and (3) Vanessa Hamilton, who cares for her two sons and three orphaned nephews by two different sisters. In each instance, the State's assistance unit regulation groups all of the children in one assistance unit rather than two, reducing the overall AFDC grant. For example, plaintiff Verna Edwards cares for her granddaughter and two grand nieces. If the granddaughter and grandnieces are considered separate "assistance units," because they are not siblings to each other, Edwards receives $901. If instead, the AFDC eligible children under Edwards care are considered a single AFDC assistance unit she receives $630.

DISCUSSION

A. Class Certification

Plaintiffs propose to certify a class consisting of:

> All AFDC applicants or recipients who live in households comprised of two or more non-

sibling dependent children and a single caretaker relative, or relative married couple who will be affected by MPP sections 44-205.31 and 82-824.1.

A proposed class must meet the following requirements to be certified: (1) the class must be so numerous that joinder of all members is impracticable; (2) there must be questions of law or fact common to the class; (3) the claims or defenses of the representative parties must be typical of the claims or defenses of the class, and (4) the representatives must be able to fairly and adequately protect the interests of the class.[5] Fed. R. Civ. Proc. 23(a). In addition, plaintiffs must fulfill the requirements of one of the subdivisions of Rule 23(b). Plaintiffs assert that they satisfy the requirements of Rule 23(b)(2), that "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole."

Plaintiffs demonstrate that the proposed class meets the numerosity requirement. California has over two million AFDC recipients each month. In 1989, the state estimated that 4% of the recipient households, representing 80,000 monthly recipients, included a child living with a non-parent caretaker. Class certification is not precluded where the exact size of the class or the identity of the class members is uncertain. *See Lynch v. Bank*, 604 F. Supp.

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[5] Defendant challenges only the typicality of the class and the proposed class definition. At oral argument defendant appeared to concede these challenges. However, the court must assure that all elements of certification have been met.

30, 36 (N.D. Cal. 1984), *aff'd*, 747 F.2d 528 (9th Cir. 1984). It is clear that joinder of all potential plaintiffs is impracticable. *See Jordan v. County of Los Angeles*, 669 F.2d 1311, 1319 (9th Cir. 1981) (where a class is large, joinder is considered impracticable).

Plaintiffs also demonstrate that there are common questions of law and fact among the class. Rule 23(a)(2). The challenged regulation is enforced by the state against every member of the class, reducing each member's AFDC grant. Moreover, the issue of whether the regulation is valid presents an identical question of law for each class member.

In its brief, although not at oral argument, defendant questioned whether the claims of the named class representatives are typical of the class. Defendant asserts that there is a conflict of interest between class members. It argues that the requested relief may prohibit a caretaker and "non-siblings" from being in the same assistance unit. This misconstrues the relief plaintiffs seek. Further, the result defendant posits would itself violate federal law. 42 U.S.C. § 606(b)(1).[6] Plaintiffs seek an injunction barring enforcement of the regulation that combines all AFDC eligible children seeking assistance from a single caretaker into a single assistance unit regardless of whether the caretaker is legally responsible for the care of the children. Nullifying this regulation does not require that an AFDC eligible caretaker be eliminated from all assistance units in the household. The caretaker would

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[6] 42 U.S.C. § 606(b)(1) provides that caretaker relatives may receive AFDC to meet their own needs. *See also* 45 C.F.R. § 233.10(b)(2)(ii)(*b*).

claim benefits with only one assistance unit, as plaintiffs Moore and Hamilton did before this regulation. The conflict defendant perceives, therefore, is illusory.

Finally, plaintiffs show that the proposed class representatives, Edwards, Moore, Hamilton, and the dependent children in their care, together with their counsel, will fairly and adequately protect the interests of the plaintiff class. Rule 23(a)(4).[7]

Plaintiffs seek class certification under Rule 23(b)(2) on the basis that the defendant has acted on grounds applicable to the entire class, making final injunctive relief or corresponding declaratory relief appropriate. Class actions are particularly suited to government benefits cases in which injunctive relief is sought. In these cases, the class action device avoids potential mootness problems and facilitates the enforcement of judgments. 4 *Newberg on Class Actions* § 23.11 (1985). Defendant here has acted against the entire class and injunctive relief would be the most effective relief. *See Lynch,* 604 F. Supp. 30 (N.D. Cal. 1984) (certifying a nationwide class after defendant applied a previous adverse decision only where specifically compelled to do so).

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[7] Plaintiffs' counsel are various Legal Service law firms which represent exclusively low income persons. Collectively they have extensive experience in class actions and public entitlement law in federal and state courts. The competence and qualifications of plaintiffs' counsel are undisputed.

B. Summary Judgment

Plaintiffs claim that the disputed regulation is indistinguishable from the regulation held invalid in *Beaton v. Thompson*, 913 F.2d 701 (9th Cir. 1990). In that case, AFDC recipients obtained an injunction prohibiting enforcement of a State of Washington regulation which deemed all eligible siblings and non-siblings living with a single caretaker relative or relative married couple a single assistance unit. The Washington regulation provided as follows:

> The department shall authorize only one assistance unit grant for all needy eligible siblings and nonsiblings living with a single caretaker relative or relative married couple. WAS 388-24-050(3).

The *Beaton* court held that the disputed regulation was not simply a redefinition of an assistance unit, but violated federal law by presuming "that the non-legally responsible relative with whom the child lives is contributing to the support of the child without proof of any actual contribution." *Beaton*, 913 F.2d at 704, citing *McCoog v. Hegstrom*, 690 F.2d 1280, 1286 (9th Cir. 1982) (invalidating the "non-needy" relative rule on the basis that it improperly presumes that a non-needy relative caretaker makes additional income available to the AFDC eligible child by bearing most of the housing costs); *Gurley v. Wohlgemuth*, 421 F. Supp. 1337, 1346-47 (E.D. Pa. 1976) (striking regulation which "redefined" assistance unit to include non-legally responsible adults because the regulation presumed income from adult would be contributed to AFDC eligible child). *See also* 45 C.F.R. § 233.20(a)(3)(ii)(D), 233.90(a)(1) and 233.20(a)(2)(viii).

The court cannot fairly distinguish *Beaton*, and it is binding authority in this case. The California regulations at issue here, although worded slightly differently, have the identical effect as the Washington regulation: consolidation of all eligible AFDC recipients living with a single caretaker into a single assistance unit. The plaintiffs in this case and in *Beaton* are also identical: AFDC eligible children and their non-legally responsible relative caretakers. The injury suffered by plaintiffs is identical: reduction of benefits due to calculation of benefits for all AFDC eligible recipients in a single assistance unit, regardless of the legal responsibility of the relative caretaker for the AFDC eligible child. The relevant federal law is unchanged. Thus, *Beaton* is binding precedent on this court. *See Zuniga v. United Can Co.*, 812 F.2d 443, 450 (9th Cir. 1987) (district courts are bound to follow the precedents of their circuit court).

Defendant contends that *Beaton* is legally distinguishable because the defendant presents issues not considered or ruled upon by the *Beaton* court and because *Beaton*, itself, does not "work justice or provide for an equitable resolution of the issues presented." Defendant's motion at 25:23-34. Specifically, defendant contends that the *Beaton* court did not consider whether *Bowen v. Gilliard*, 483 U.S. 587 (1987) affected the validity of *McCoog* and whether the federal law permits California to enact the disputed regulations.[8] However, *Bowen* was decided

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[8] The court takes judicial notice of the fact that the State of Washington raised the effect of *Bowen* and the effect of the Deficit Reduction Act of 1984 in its briefs before the District Court in *Beaton*.

well before *Beaton*, and *Bowen* is addressed to different issues in any event. Unliked *Bowen*, the issue here, and in *Beaton*, is not the constitutionality of a federal regulation, but the consistency of a state regulation with federal law. Moreover, the precedential value of a decision is not affected when a potential argument is absent or is poorly made, or if the court does not directly address each argument. *E.E.O.C. v. Trabucco*, 791 F.2d 1, 4-5 (1st Cir. 1986); *United States v. Russell*, 461 F.2d 605, 608 (10th Cir. 1972).

In short, this court lacks authority to reconsider *Beaton* and declines to express a view concerning its persuasiveness.

C. Injunctive Relief

Defendant does not contest the appropriateness of injunctive relief assuming the court finds itself bound by *Beaton*. A party seeking a permanent injunction must generally demonstrate irreparable harm and the inadequacy of legal remedies. *Amoco Production Co. v. Village of Gambell*, 480 U.S. 531, 542 (1987). A wrong is without adequate legal remedy if money damages can not adequately compensate plaintiffs or if the injury is irreparable. *Kaiser Tradi.ıg Co. v. Associated Metals & Minerals Corp.*, 443 F.2d 1364 (9th Cir. 1971). Plaintiffs in this case, meet both tests.

The court must then "balance the competing claims of injury and consider the effect on each party of the granting or withholding of the requested relief." *Amoco*

Production, 480 U.S. at 544. The district court has considerable discretion to fashion appropriate injunctive relief. *U.S. v. Akers*, 785 F.2d 814 (9th Cir. 1986).

Plaintiffs' demonstrate that the income of households affected by this regulation has dropped and caused resulting hardships.[9] The balance of hardships tips in favor of plaintiffs when balancing a "conflict between financial concerns and preventable human suffering." *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983).

CONCLUSION

Plaintiffs motion for class certification is granted. The court certifies a class consisting of:

> All AFDC applicants or recipients who live in households comprised of two or more non-sibling dependent children and a single caretaker relative, or relative married couple, who will be affected by MPP § 44-205.31 and 82-824.1

Plaintiffs' motion for summary judgment is granted under the controlling precedent of *Beaton*. Defendant's motion is denied. At oral argument the court instructed the parties to confer and seek agreement on the precise wording of the injunction. By May 1, 1992, the parties are to submit stipulated wording or alternative versions of an

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[9] The court overrules the objections to the admission of the declaration of Dr. Harry Z. Coren and receives it into the record as part of the evidence showing hardship resulting from the reduced AFDC grants.

order. The court will issue the injunction following review of the parties' submissions.

IT IS SO ORDERED.

Dated: 21 April 1992 .

/s/ David F. Levi
DAVID F. LEVI, Judge
United States
District Court

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

VERNA EDWARDS, Guardian Ad Litem for Verna Edwards, Pamela Edwards and Ericka Edwards; BARBARA MOORE Guardian Ad Litem for Rebiana Robi; Derral Robi, Delisha Jaa and Rayleisha Taylor et al., Plaintiffs-Appellees, v JOHN HEALY, in his official capacity as acting director of the California Department of Social Services; THOMAS HAYES, in his official capacity as Director, California Department of Finance Defendants-Appellants	CA No. 92-16051 DC NO. CV-91-01473-DFL ORDER (Filed Feb. 22, 1994)

BEFORE: CANBY AND NOONAN, CIRCUIT JUDGES and ORRICK, DISTRICT JUDGE

The panel as constituted in the above case has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for an en banc rehearing, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed.R.APP. P. 35(b).

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

Mateo Muñoz, DAG
Attorney General's Office
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em 92-16051

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45 C.F.R. § 233.20(a)(2)(viii)

(viii) Provide that the money amount of any need item included in the standard will not be prorated or otherwise reduced solely because of the presence in the household of a non-legally responsible individual; and the agency will not assume any contribution from such individual for the support of the assistance unit except as provided in paragraphs (a)(3)(xiv) and (a)(5) of this section and § 233.51 of this part.

45 C.F.R. § 233.20(a)(3)(ii)(D)

(D) Income after application of disregards, except as provided in paragraph (a)(3)(xiii) of this section, and resources available for current use shall be considered. To the extent not inconsistent with any other provision of this chapter, income and resources are considered available both when actually available and when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance.

45 C.F.R. § 233.90(a)(1)

(1) The determination whether a child has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or (if the State plan includes such cases) the unemployment of his or her parent who is the principal earner will be made only in relation to the child's natural or adoptive parent, or in relation to the child's stepparent who is married, under State law, to the child's natural or adoptive parent and is legally obligated to support the child under State law of general applicability which requires stepparents to support stepchildren to the same extent that natural or adoptive parents are required to support their children. Under this requirement, the inclusion in the family, or the presence in the home, of a "substitute parent" or "man-in-the-house" or any individual other than one described in this paragraph is not an acceptable basis for a finding of ineligibility or for assuming the availability of income by the State;

Aid to Families
with Dependent Children (AFDC)
Action Transmittal

U.S. Department of
Health and Human Services
Administration for Children &
Families
Office of Family Assistance
Washington, D.C. 20447

Transmittal No. ACF-AT-94-6 Date March 16, 1994

TO: STATE AGENCIES ADMINISTERING APPROVED PUBLIC ASSISTANCE PROGRAMS AND OTHER INTERESTED PARTIES AND ORGANIZATIONS

SUBJECT: STATE OPTION TO CONSOLIDATE ASSISTANCE PAYMENT UNITS IN THE SAME HOUSEHOLD AND THE EFFECT OF FEDERAL REGULATIONS ON ASSUMING THE AVAILABILITY OF INCOME.

APPLICABILITY: Aid to Families with Dependent Children (AFDC) Program

RELATED REFERENCES: Sections 402(a)(7), 402(a)(8), 402(a)(31), 402(a)(38), 405, 406(b)(2), and 415 of the Social Security Act (the Act); Federal regulations at 45 CFR 206.10(a)(1)(vii); 45 CFR 206.10(b)(5); 45 CFR 233.20(a)(1)(iii); 45 CFR 233.20(a)(2)(viii); 45 CFR 233.20(a)(3)(ii)(D); 45 CFR 233.20(a)(3)(B) and (F); and 45 CFR 233.90(a)(1); preamble to the final

rules on the AFDC provisions of the Deficit Reduction Act of 1984 (DRA), 57 F.R. 30135-30141, July 8, 1992; and SSA-AT-86-1, January 13, 1986.

PURPOSE: To re-state the policy governing the authority of State agencies to consolidate assistance units in certain situations and to clarify that such a consolidation does not conflict with the Federal regulations that prohibit assuming the availability of income from certain persons without actually determining that it has been contributed.

BACKGROUND: As a result of several recent challenges to State practices concerning consolidation of assistance units, policy guidance has now been sought about: (1) State authority to consolidate two or more assistance units in the same household that are not otherwise required under Federal law to be consolidated; and (2) how this authority relates to several Federal regulations that prohibit the State from assuming the availability of income belonging to a person in the household who is not legally responsible for the dependent child(ren) without determining that it had actually been contributed.

INSTRUCTION: Before assistance under the AFDC program can be awarded, States must first determine the composition of the assistance unit and then establish eligibility which includes determining

the income and resources available to members of the unit. These two steps were emphasized when the final regulation was promulgated, See 57 F.R. 30139 (July 8, 1992).

Pursuant to section 402(a)(38) of the Act and section 206.10(a)(1)(vii) of the regulations, an application on behalf of a dependent child must include as applicants, if living in the same household as the dependent child and otherwise eligible for assistance, his/her natural or adoptive parent(s), stepparent (where the State has a law of general applicability holding such stepparent legally responsible for support of the child) and blood-related or adoptive brother(s) and sister(s) who are themselves dependent children within the limit set by the State. These applicants are included in a single assistance unit.

Pursuant to section 233.20(a)(1)(iii) of the regulations, when a person is required to be included in two or more assistance units in the same household, these units must be consolidated.

Apart from complying with these two Federal requirements, States are authorized to set the State-wide policy, to be applied to all cases, whether and under what conditions two or more assistance units in the same household are to be consolidated or retained as separate units. *See* Action

Transmittal SSA-AT-86-1; 57 F.R. 30132, 30136-30137 (July 8, 1992).

Section 402(a)(7)(A) of the Act requires that, after allowing for the disregards and allocations permitted under sections 402(a)(8) and (31) and 415, in determining the need of an assistance unit, the State must take into consideration all the income and resources of any child or relative claiming assistance in the unit as well as the income and resources of any other individual whose need the State determines should be considered. Section 206.10(b)(5) of the regulations provides that the "assistance unit" is "the group of individuals whose income, resources and needs are considered *as a unit* for the purpose of determining eligibility and the amount of payment" (emphasis added). There is no requirement under these provisions of Federal law that the State must determine on a case-by-case basis whether income or resources of a member of the assistance unit are actually contributed for the use of other members of the unit.

These principles of counting the income and resources of all the members of the assistance unit apply to all assistance units under the program. For the same reasons, they apply where the State elects as a policy to consolidate assistance units in the same household.

Several provisions of the Federal regulations prohibit the State from assuming the availability of income to a claimant without determining that it has actually been contributed to him/her, if it is assumed from a person who is not a member of the assistance unit and who is not legally responsible for supporting the child. These provisions do not conflict with the State policy option to consolidate assistance units in the same household.

Section 233.20(a)(2)(viii) provides that the money amount of need will not be reduced "solely because of the presence *in the household* of a non-legally responsible individual; and the agency will not assume any contribution from such individual for the support *of the assistance unit* [with certain exceptions]." (emphasis added). As its express language demonstrates, the regulation was intended to prohibit the State from assuming (without actually determining) that there will be available to the dependent child(ren) in an assistance unit the income or resources of a person who lives in the *same household*, but is *not* a member of the *assistance unit* claiming benefits and is not legally responsible to support those who are. This is the intent of the regulation because the program does not assume that a person living in the household, but not a member of the assistance unit, will

contribute his/her income or resources. In contrast, the statute and regulations expressly require that all income and resources of all members of the assistance unit will be counted.

Section 233.20(a)(3)(ii)(D) provides that, when determining the income and resources of individuals in the assistance unit, income and resources are considered available both when actually available to a member of the unit and when the member has a legal interest in a liquidated sum and the legal ability to make it available for support and maintenance. This regulation is intended to preclude the State from counting as available to the assistance unit income or resources that are not actually or legally available to one of the members of the unit. Once income or resources that are available to each member of the assistance unit are counted, the income and resources of all the members of the assistance unit are considered together to determine the need, eligibility and amount of payment of a unit pursuant to section 402(a)(7)(A) of the Act and section 206.10(b)(5) of the regulations.

Section 233.90(a)(1) provides that, *when the State is making the determination about whether a child has been deprived of parental support or care,* the State will consider as a "parent" for this purpose only the child's natural

or adoptive parent or the stepparent married to his/her natural or adoptive parent if such stepparent is legally obligated under state law of general applicability to support the child to the same extent that natural or adoptive parents are required to support their children. (emphasis added). Specifically, the presence in the household of a "substitute parent" or "man-in-the-house" or "any individual other than one described in this paragraph" is not an acceptable basis for assuming the availability of parental income for support if he/she does not meet the terms of the section. By its terms, this regulation prohibits the State from finding a claimant ineligible because it concludes that the presence of such a person should mean that the claimant is not deprived of parental support.

In 1981, section 233.90(a)(1) was revised to eliminate another sentence that had provided:

> In establishing financial eligibility and the amount of the assistance payment, only such net income as is actually available for current use on a regular basis will be considered, and the income only of the parent described in the first sentence of this paragraph will be considered available for children in the household in the absence of proof of actual contributions.

See 46 F.R. 46750, 46768 (September 21, 1981). With this change, we have made clear that section 233.90 does *not* require that income of members of the assistance unit must be proven to be actually contributed to other members.

We provided here two additional examples that illustrate the appropriate operation of these provisions of Federal law on specific cases.

EXAMPLE A:

> The State has determined as a matter of policy that two or more assistance units in the same household are to be consolidated. The grandmother of two dependent children lives with them in a household and is included with them in an assistance unit. A daughter of the grandmother has lived in the household with her three children (who are not the brothers or sisters of the first two children) and is included with her children in a separate assistance unit. A male friend of the daughter has lived in the house as a "man-in-the-house" but is not married to the daughter and is not legally responsible for the support of her children. After the daughter dies, the grandmother becomes the caretaker relative for all five children in a consolidated assistance unit. Due to friendship

that has grown up, the male friend remains living in the household. All of the income and resources of the grandmother and the five children are considered in determining need, eligibility and amount of payment for the assistance unit. The income and resources of the male friend may not be considered available to the assistance unit without the State's determining that they are actually made available.

EXAMPLE B:

The same factual situation as in Example A, except that the State has determined as policy that two or more assistance units in the same household are to remain separate units. The grandmother remains the caretaker relative of her two grandchildren in one unit; she becomes the caretaker relative of her deceased daughter's three children, but their separate assistance unit does not include her. The income and resources of the members of each assistance unit are considered within each respective unit to determine need, eligibility and amount of payment for each unit. The income and resources of members of one unit are not considered available to members of the other unit, nor are those of the

male friend available to either unit, unless the State determines that they are actually made available.

The regulations require that the determination of need and amount of assistance for all applicants and recipients will be made "on an objective and equitable basis." 45 CFR 233.20(a)(1). The program authorizes a State to determine need standards and payment standards that accommodate the balance of equity in that State. The decision to consolidate assistance units or to retain separate units in a single household is also a policy determination that a State makes balancing the equities. A State might opt to consolidate assistance units in order to promote equitable treatment for households of similar composition: all households having a parent or caretaker relative and four eligible children, for example, would receive the same level of payment.

Section 405 of the Act provides remedies for States whenever there is reason to believe that payments made in behalf of a child(ren) in an assistance unit are not being used for the child's best interests. These include the appointments of a protective payee or legal representative pursuant to sections 406(b)(2) and 1111 of the Act respectively. States have further redress under State law that may

include the imposition of criminal or civil penalties based on judicial findings.

INQUIRIES TO: ACF Regional Administrators

/s/ Diann Dawson
Diann Dawson
Acting Director
Office of Family Assistance

Aid to Families With Dependent Children (AFDC)
Action Transmittal

U.S. Department of
Health and Human Services
Social Security Administration
Office of Family Assistance

Transmittal No. SSA-AT-86-1 Date January 13, 1986

TO : STATE AGENCIES ADMINISTERING APPROVED PUBLIC ASSISTANCE PLANS AND OTHER INTERESTED PARTIES

SUBJECT : The filing unit provision at §2640 of the Deficit Reduction Act of 1984.

REGULATORY REFERENCE : 45 CFR 206.10(a)(1)(vii)

PURPOSE : To instruct States regarding proper implementation of the requirement that certain family members must file for assistance as a unit.

BACKGROUND: Under prior law, family members who lived together were not required to file for AFDC benefits as a unit; a parent filing for a dependent child could choose to include or exclude himself or herself and other potentially eligible children from the assistance unit. This allowed the family to maximize the AFDC benefit and family income. States were not able to count either

income or resources of excluded individuals in determining need and payment for the eligible child, except that income of a parent was considered available to children under 21, and income of a spouse was considered available to the other spouse.

Section 2640 of DRA, which added section 402(a)(38) to the Act, requires that an application on behalf of a dependent child must include as applicants certain potentially eligible relatives living in the same household as the dependent child. Any income and resources of these relatives is counted in making the determination under section 402(a)(7).

Interim final regulations which included the assistance unit provision were published in the Federal Register on September 10, 1984. Since that time we have received numerous questions from States and other interested parties concerning all factors of the AFDC program affected by this provision. In an effort to assist States in implementing this provision until final regulations are published, we are providing the instructions below.

Additional regulatory changes and instructions will be included when the final rule is published. Nevertheless, the instructions below clarify the areas of greatest concern, as determined by the questions we have received.

INSTRUCTION: *The assistance unit rule*

Section 402(a)(38) of the Act requires that the following individuals, if living in the same household as the dependent child and otherwise eligible, be included in the assistance unit:

- the parent(s) of a dependent child;
- the brothers and sisters of the dependent child who are themselves dependent children within the age limit set by the State.

Notwithstanding the above, certain parents and siblings must be excluded from the assistance unit because they are not eligible for assistance under other provisions of the Act. For example:

- Individuals who receive SSI benefits;
- aliens who fail to meet the citizenship and alienage requirements at section 233.50;
- aliens who are ineligible due to the deemed income or resources of their sponsors, or due to sponsorship by an agency or organization pursuant to section 233.51; and;
- individuals ineligible due to receipt of lump sum income.

Individuals who must be included in the assistance unit

First, any parent who is living in the same household as the dependent child must be included in the unit. "Parent", as defined in section 233.90(a)(1), includes a natural or adoptive parent and a stepparent in States with laws of general applicability holding them legally responsible to the same extent as a natural parent. In cases of eligibility due to incapacity or, in States with an AFDC-UP program, unemployment of the principal earner, both parents must be included in the assistance unit if otherwise eligible under the Act.

Second, blood-related or adoptive brothers and sisters who are living in the same household as the dependent child and who meet the eligibility requirements for AFDC must also be included in the unit.

As an example, in States without laws of general applicability, if a dependent child's household consists of his mother, stepfather and stepbrother, under the new law the assistance unit must include the dependent child and his mother. His stepfather's income would be considered available to the assistance unit after application of the stepparent income disregards (at section 233.20(a)(3)(xiv)), which would include an amount for the support of his child. If application is made on the stepbrother's behalf, he and his natural

parent could receive benefits as part of the same assistance unit or as a separate unit in accordance with State policies on budgeting assistance units.

In States with laws of general applicability, the stepparent must be included in the assistance unit, since he or she is considered the same as a natural parent; however, stepbrothers and stepsisters of the dependent child need not be included in the assistance unit.

All of the income and resources of the individuals required to be included in the assistance unit must be considered in determining eligibility and payment for the assistance unit. In this connection, the statute specifically provides for the inclusion of title II benefits, notwithstanding section 205(j) of the Social Security Act. Where Title II benefits are paid to a representative payee on behalf of a member of the assistance unit and the payee lives in the same household as the assistance unit, the title II benefits must be counted as income. When the representative payee does not live in the household, the title II benefits are included only to the extent that the payee makes them available for the support of the beneficiary. Prior AFDC policy, as stated in State Letter 1088, which permitted the exclusion of a child receiving title II benefits and his title II income, was revoked by the interim final regulation.

Consolidating multiple assistance unit households

When an individual is required to be in two or more assistance units living in the same household, these units must be consolidated. Two examples follow.

- A household consists of a mother and her three children. All receive AFDC. One of these children then has a baby. If an application is filed on the grandchild's behalf, it must be a member of the grandmother's unit. Previously, a State might have paid the grandchild or the grandchild and his mother as a separate unit. But the assistance unit provision requires that the minor mother be in the unit with her child and in the unit of her siblings. Thus, they must all form one unit.

  It is important to note that there is no requirement that the family seek assistance for the grandchild in the example above.

- A mother and her child live with her second husband, who is disabled, and his child. Both parents receive AFDC, but as separate units. (In this situation, there is no requirement to consolidate assistance units, though the State may choose to do so.) They then have a child. Since this child is eligible for AFDC due to the father's incapacity, the child is required to be included in the assistance units

of both half-siblings. As a consequent, all five family members must be consolidated in a single assistance unit.

Outside of this policy, it is up to the State to establish policy on the number of assistance units in the household, e.g., when an individual not related to a member of an assistance unit as a parent, brother or sister lives in the household and files for assistance.

* * *

44-205 ESTABLISHING THE FBU

.3 Determining the number of FBUs in the home

.31 Once the county has determined which person or persons in the home is a caretaker relative, it is possible to establish the FBU. All of the eligible child(ren) will be in one FBU if there is only one caretaker relative in the home. If there is more than one caretaker relative in the home, the eligible children of each caretaker will be in separate FBUs, except in the following situations:

82-824 ASSISTANCE UNITS THAT SHALL BE COMBINED

.1 Combining AUs — Two or more AUs in the same home shall be combined into one AU when:

* * *

.13 One caretaker — There is only one caretaker relative.

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

VERNA EDWARDS, et al., Plaintiffs, v. JOHN D. HEALY, et al., Defendants	No. CIV-S-91 1473 DFL PAN DECLARATION OF JO ANNE B. BARNHART (Filed Feb. 14, 1992)

I, Jo Anne B. Barnhart, hereby declare as follows:

1. I am the Assistant Secretary for Children and Families of the United States Department of Health and Human Services ("HHS"). In that capacity, I have overall responsibility for the administration of the Aid to Families with Dependent Children (AFDC) program under title IV-A of the Social Security Act (ACT).

2. The purpose of this affidavit is to describe the filing unit provision at section 2640 of the Deficit Reduction Act of 1984 (DRA). "Filing unit" refers to members of

a household whose needs are considered in determining the household's eligibility for an amount of AFDC assistance.

3. Section 2640 of DRA, which added section 402(a)(38), 42 U.S.C. section 602(a)(38) to the ACT, requires that the parents and siblings of an AFDC child who are themselves dependent children must be included in the filing unit and have their income and resources considered available to the unit.

4. In DRA, Congress enacted the first mandatory requirement regarding composition of the filing unit for AFDC assistance. Prior to 1984, there was no requirement that all co-resident family members be included in the filing unit for AFDC purposes. A family applying for AFDC assistance could, therefore, exclude from the filing unit those family members with income which would reduce or terminate the family's AFDC benefits.

5. Effective October 1, 1984, section 2640 of DRA requires certain individuals living in the same household to file for AFDC as a unit. Included are:

- parents, and
- blood-related or adoptive brothers and sisters who are:
  - o under the age selected by the State for AFDC payments (age 18 or 19)
  - o deprived of parental support or care by reason of death, continued absence from the home, physical or mental incapacity of a parent, or unemployment of a parent
  - o "living with" a specified relative.

Notwithstanding the above, certain parents and siblings must be excluded from the assistance unit because they are not eligible for assistance under other provisions of the Act.

6. When an individual is required to be in two or more assistance units, these units must be consolidated. Federal policy as enunciated in SSA-AT-86-1 allows States to establish policy on the number of assistance units in other household situations.

7. States are allowed the discretion to define assistance units for the AFDC program beyond the mandatory parent/sibling composition.

8. DHHS considers the California Policy of establishing a single Assistance Unit for all children living with the same caretaker relative, as set forth in California manual of Policies and Procedures Section 44-205.31 (attached as exhibit 1), to be in compliance with federal statutes and regulations.

9. Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 27th day of January, 1992.

/s/ Jo Anne B. Barnhart
Jo Anne B. Barnhart
Assistant Secretary for
Children and Families
Department of Health and
Human Services

EXHIBIT 1
STANDARDS OF ASSISTANCE
FBU COMPOSITION AND NEED

44-205 ESTABLISHING THE FBU

.1 General

When AFDC is requested for a child or for the needy relative(s) of an otherwise eligible child(ren) who is receiving SSI/SSP the determination of who is included in the FBU is made by the county and the caretaker relative of the child.

.2 Determining the Caretaker Relative(s)

.21 When an applicant for AFDC submits the Form CA 2, it includes the names of all potentially eligible children living in the home. The first step in establishing the FBU is to determine the caretaker relative(s) of the children. It is necessary to identify the caretaker relative(s) in order to determine if there will be one or more FBUs (see Section 44-203.21 Definition of Caretaker Relative above).

.211 Generally, if the child is living with a parent, the parent is the caretaker relative. If the child is not living with a parent, generally the applicant will be the caretaker relative. The county must make a determination of what person or persons have responsibility for the care and control of the children for whom aid is requested based on information supplied by the applicant.

.3 Determining the Number of FBUs in the Home

.31 Once the county has determined which person or persons in the home is a caretaker relative, it is possible to establish the FBU. All of the eligible child(ren) will be in one FBU if there is only one caretaker relative in the home. If there is more than one caretaker relative in the home, the eligible children of each caretaker will be in separate FBUs, except in the following situations:

.311 Only one FBU is established where the caretaker relative is a parent who could be included as an eligible child in the FBU of another caretaker relative in the home. (Deprivation for all the eligible children must be established per EAS Chapter 41-400.)